Canada

Nova Scotia

Canada - Nova Scotia Offshore Petroleum Resources Accord

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CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD

Canada and the Province of Nova Scotia agree that oil and gas in the Offshore Area must be developed in a manner that harmonizes the interests of all Canadians with the interests of those Canadians living in Nova Scotia so that together they may build lasting social and economic structures and thereby take advantage of these new opportunities.

The Parties agree by this Accord to establish through mirror legislation a unified administrative and fiscal regime for Petroleum Resources in the Offshore Area. This regime is founded on the same basis of parity and fairness as exists between the Federal Government and the other petroleum-producing provinces of Canada, yet is designed to meet the unique circumstances of the Offshore Area.

This political settlement of the issues between the Parties has been reached without prejudice to and notwithstanding their respective legal positions. It is the intention of the Parties that this settlement survive any decision of a court with respect to ownership or jurisdiction over the Offshore Area.

Article 1 - Objectives

1.01 The prime objective of this Accord is that the joint management regime continue to foster a spirit of agreement and cooperation between the Parties as they continue working together to meet the challenges of the Offshore Area.

1.02 The objectives of this Accord are:

(a) to achieve the early development of Petroleum Resources in the Offshore Area for the benefit of Canada as a whole and Nova Scotia in particular;

(b) to protect, preserve and advance the attainment of national security of supply;

(c) to recognize the right of Nova Scotia to be the principal beneficiary of the Petroleum Resources in the Offshore Area, consistent with the requirement for a strong and united Canada;

(d) to give effect to the equality of both governments in the management of the Petroleum Resources and to ensure that the pace and manner of development optimize the employment and industrial benefits to Canada as a whole and to Nova Scotia in particular;

(e) to provide the Government of Nova Scotia with responsibility for, control of and revenues from provincial-type fiscal instruments as if these resources were on the land portion of the province;

(f) to ensure the continuance of a stable offshore administrative regime for the industry consistent, insofar as is appropriate, with regimes established for other offshore areas in Canada; and

(g) to ensure that Nova Scotia will receive financial benefits equivalent to those it would have achieved had it exercised its Crown Share option.

1.03 The Parties shall review the objectives at the end of every five-year period, or at any other time upon the request of either Party. The objectives may be amended at any time, by agreement of both Parties.

1.04 For the purposes of this Article and the remainder of the Accord, the following words shall have the following meanings:

(a) "Ministers" means the Minister of Energy, Mines and Resources of the Government of Canada and the Minister of Mines and Energy of the Province of Nova Scotia;

(b) "Parties" means Canada and the Province of Nova Scotia;

(c) "Petroleum Resource" means oil and gas. For further certainty, "oil" means:

(i) crude oil, regardless of gravity, produced at a wellhead in liquid form, and

(ii) any other hydrocarbons, except coal and gas, and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface or the seabed or its subsoil,

and "gas" means natural gas and includes all substances, other than oil, that are produced in association with natural gas;

(d) "Offshore Area" means the offshore area as defined by Article 43 of this Accord; and

(e) "Offshore Revenue Threshold" means a cumulative amount of $200 million in gross federal revenue entitlement from production in the Offshore Area, calculated on a stand-alone project-specific basis.

PART I - MANAGEMENT

Article 2 - Constitution of the Board

2.01 The Parties agree to establish, by legislation, a Canada-Nova Scotia Offshore Oil and Gas Board ("the Board") and to empower the Board to act in all such matters relating to Petroleum Resources as are in accordance with this Accord.

2.02 Subject to the terms of this Accord, the Board shall be an independent board.

2.03 The Board shall consist of five members, including the Chairman, none of whom shall act as representatives of either Party.

Article 3 - Appointment of Members

3.01 The Chairman of the Board shall be appointed jointly by the Parties for a term of six years.

3.02 The other members of the Board may be appointed jointly, or in the alternative, each Party may appoint two members.

3.03 At any given time, no more than two members of the Board may be public servants, and no more than one member appointed by each Party shall be a public servant.

3.04 Where the Parties fail to agree on the appointment of the Chairman either Party may, by notice to the other, require the submission of the candidates' names to a panel of three arbitrators appointed in accordance with Article 41, who shall appoint the Chairman from among the candidates nominated by each Party.

3.05 Subject to Article 3.06, each member of the Board shall be appointed for a term of six years.

3.06 Of the members first appointed, other than the Chairman, one shall be appointed by each Party for a term of four years and one shall be appointed by each Party for a term of five years.

3.07 The members appointed for terms of four or five years may be among those members appointed jointly.

3.08 An alternate member may be appointed to serve in the absence or incapacity of a member by the Party or Parties that appointed the member.

3.09 Each member of the Board who is not a public servant holds office during good behaviour but may be removed for cause by the Party or Parties that appointed the member.

3.10 Each member of the Board who is a public servant holds office during pleasure.

3.11 Each member of the Board is eligible for reappointment.

3.12 Each member of the Board shall be subject to the conflict of interest guidelines established by the Parties.

Article 4 - Organization of the Board

4.01 The Board's offices and staff shall be located in Nova Scotia.

4.02 The Chairman shall be the Chief Executive Officer of the Board.

4.03 The Board, on the recommendation of the Chief Executive Officer, shall appoint such staff as it requires in order to perform its duties and functions and exercise its powers.

4.04 The Board's employees shall be selected on the basis of merit, generally following a public competition, and shall not be employees of the public service of either Party. However, at the request of the Board, the Parties shall take all reasonable steps to facilitate mobility between employment in the public service and employment with the Board, including secondments and portable pensions.

Article 5 - Procedure of the Board

5.01 The Board shall meet

(a) once every two months unless the members of the Board unanimously agree to defer that meeting; and

(b) at any time

(i) at the call of the Chairman;

(ii) on the request of any two members; or

(iii) on the request of either Party to review any matter referred to it by that Party.

5.02 The Board should proceed on the basis of unanimous agreement, but, in the absence of such agreement, decisions shall be made by majority vote.

5.03 A quorum of the Board shall be three members.

5.04 The Board may from time to time make bylaws respecting its procedures, practices, the conduct of its work and the management of its internal affairs including the establishment of conflict of interest guidelines for its staff.

Article 6 - Core Storage

6.01 (a) The Board shall assume the responsibility for managing, at the Bedford Institute of Oceanography, geophysical records and geological and hydrocarbon samples relating to the Offshore Area.

(b) The Board shall at the request of either Minister deliver a sample of a drill cutting or a piece of a core from a well in the Offshore Area provided that representative samples are retained at the Bedford Institute of Oceanography.

Article 7 - Budget

7.01 The Board shall, in respect of each fiscal year, prepare a budget sufficient to permit it to properly exercise its powers and perform its duties and functions.

7.02 The budget shall be submitted to the Parties for approval.

7.03 The Parties shall fund by equal contribution the Board's expenditures in each fiscal year as determined in the approved budget and any approved revision thereof.

Article 8 - Annual Report

8.01 The Board shall prepare and submit an annual report to the Parties by the end of the first quarter of the following fiscal year, which shall contain an audited financial statement and a description of the Board's activities during the previous year.

8.02 The report shall be tabled in the House of Commons and the Nova Scotia Legislative Assembly.

PART II - DIVISION OF POWERS

9.01 For the purpose of defining the role of the Board and Ministers, decisions in the Offshore Area shall be divided as follows:

(a) decisions made by Parliament, the Government of Canada, or Federal Ministers (Article 10);

(b) decisions made by the Nova Scotia Legislature, the Nova Scotia Government or Provincial Ministers (Article 11);

(c) decisions made by the Board not subject to ministerial review (Article 12); and

(d) fundamental decisions made by the Board subject to ministerial review (Article 13).

Article 10 - Federal Powers

10.01 Decisions made by Parliament, the Government of Canada or Federal Ministers comprise those

(a) related to the level of Canadian participation;

(b) made pursuant to laws of general application within the exclusive jurisdiction of the Parliament of Canada, not specifically related to Petroleum Resources in the Offshore Area;

(c) related to the application of federal taxes, except any taxes established pursuant to Article 39.04; and

(d) related to reservation of lands from disposition, or suspension of activities, which reservation or suspension is for reasons of international boundary disagreements or national defence.

Article 11 - Provincial Powers

11.01 Decisions made by the Nova Scotia Legislature, the Government of Nova Scotia or Provincial Ministers comprise those

(a) related to the royalty regime and other provincial-type fiscal instruments; and

(b) made pursuant to provincial laws of general application.

Article 12 - Board Powers

12.01 The Board shall have the authority to make all such decisions respecting Petroleum Resource activities in the Offshore Area as are in accordance with this Accord.

12.02 The exercise of a power or the performance of a duty or function by the Board is not subject to the review or approval of either Party except in respect of the fundamental decisions set out in Article 13.

12.03 Without limiting the generality of Articles 12.01 and 12.02, Board decisions which are not reviewable include

(a) designation of a person to perform any powers, duties or functions;

(b) requiring an interest owner to cease activities due to dangerous or extreme weather conditions affecting the health or safety of people or the safety of equipment;

(c) consenting to different interest owner representatives for different purposes;

(d) designation of a representative of an interest owner;

(e) declaration of significant discoveries, and amendments or revocation of such declarations;

(f) subject to Article 13, issuing significant discovery licences and production licences;

(g) releasing information to assist compliance with drilling orders;

(h) declaration of commercial discoveries, and amendments or revocation of such declarations;

(i) authorization of production without a licence for use in operations;

(j) referral of operating disputes to arbitration;

(k) appointment of members to the Oil and Gas Committee constituted by federal and provincial legislation;

(l) approval to prosecute for waste;

(m) requiring provisions for financial responsibility;

(n) authorization of payment for claims as a result of a spill or any authorized discharge, emission or escape of oil and gas;

(o) directing the holding of an inquiry respecting spills or debris and the appointment of persons to a board of inquiry;

(p) entering into a pooling agreement;

(q) entering into a unit agreement;

(r) requesting the Oil and Gas Committee to state a case to the Federal Court;

(s) approval of the technical elements of a development plan (Part II); and

(t) decisions respecting operating licences and authorizations for work or activity.

Article 13 - Fundamental Decisions

13.01 Fundamental decisions of the Board are subject to ministerial directives, suspensions and vetoes in accordance with Articles 14, 16 and 17.

13.02 Fundamental decisions of the Board are those

(a) requiring an interest owner to cease activities due to environmental or social problems;

(b) issuing Calls for Bids;

(c) issuing interests pursuant to Calls for Bids;

(d) issuing production licences to more than one interest owner or in respect of more than one commercial discovery;

(e) issuing interests without a Call for Bids in cases of error or exchange of rights;

(f) setting terms and conditions of exploration licences and amending, extending the term of or consolidating exploration licences;

(g) respecting drilling orders;

(h) setting the terms and conditions of significant discovery licences;

(i) setting the terms and conditions of production licences and extending the term of or consolidating those licences;

(j) respecting limiting the duration of an interest;

(k) respecting cancellation of rights;

(l) respecting approval of the general approach of developing a pool or field under a development plan (Part I) or any revision thereto;

(m) respecting approval of a benefits plan for any work or activity;

(n) respecting subsurface storage licences; and

(o) subject to Article 10, respecting prohibition of issuance of interests.

Article 14 - Ministerial Directives

14.01 In the public interest, the Ministers may jointly direct the Board in writing concerning

(a) fundamental decisions;

(b) the holding of public reviews; and

(c) studies and the provision of policy advice.

14.02 After review of a strategic plan, referred to in Article 23, either Minister may direct the Board in writing to include in a Call for Bids lands which have been nominated by industry.

14.03 The Federal Minister may direct the Board in writing regarding any specification of Canadian ownership levels in respect of an interest.

14.04 The Provincial Minister may direct the Board in writing regarding all fundamental decisions relating to the Bay of Fundy and Sable Island.

14.05 The Board shall carry all directives into effect.

Article 15 - Implementation of Fundamental Decisions

15.01 It is the objective of this Accord that an agreement be sought and reached between the two Parties with respect to fundamental decisions.

15.02 A copy of a fundamental decision made by the Board shall be immediately transmitted to both Ministers, and shall be made public thirty days following the receipt of a copy of that decision by the Ministers, or when implemented, whichever is sooner.

15.03 A fundamental decision of the Board shall not be implemented within thirty days following the receipt of a copy of that decision by the Ministers unless sooner agreed to by both Ministers.

Article 16 - Suspension Rights

16.01 In order to give the Parties an opportunity to reach agreement, either Minister, by notice in writing to the other Minister and the Board, within thirty days following the receipt of a copy of the decision of the Board by the Parties, may delay the implementation of a fundamental decision, but such suspension shall not extend beyond the sixtieth day following receipt of a copy of the decision by the Parties.

Article 17 - Veto

17.01 Within thirty days following receipt of a notice of a fundamental decision, or while a decision is suspended

(a) the Ministers may jointly veto the decision; or

(b) the Provincial Minister acting alone may veto

(i) the Board's approval of the general approach of developing a pool or field under a development plan (Part I); and

(ii) a fundamental decision relating to Calls for Bids or with respect to interests that are wholly within the Bay of Fundy or Sable Island.

17.02 The Federal Minister may veto a fundamental decision of the Board or restore a fundamental decision of the Board that has been vetoed by the Provincial Minister within thirty days following receipt of notice of such Board decision or provincial veto, if in the opinion of the Federal Minister, the decision or veto unreasonably delays the achievement of security of supply.

17.03 Notwithstanding Article 17.02, if the Provincial Minister disagrees with a determination of the Federal Minister that a decision of the Board or a provincial veto unreasonably delays the achievement of security of supply, the determination will be made in a summary fashion by the National Energy Board.

Article 18 - Public Notice

18.01 The Board may publish a notice of any ministerial directive, suspension or veto within thirty days of the exercise of such ministerial power.

18.02 A Minister shall publish notice of

(a) his veto of a fundamental decision;

(b) his suspension of a decision;

(c) his directive given to the Board; and

(d) his restoration of a Board decision.

18.03 Notice pursuant to Article 18.02 shall be published in

(a) the Canada Gazette, when that Minister is the Federal Minister;

(b) the Royal Gazette, when that Minister is the Provincial Minister; or

(c) in both the Canada Gazette and the Royal Gazette, when the veto or directive is by both Ministers.

Article 19 - Security of Supply

19.01 Security of supply is realized when self-sufficiency as defined in Article 19.02 is anticipated during each of the succeeding five calendar years, giving full consideration to anticipated additions to producing capacity and anticipated adjustments to refining capacity.

19.02 Self-sufficiency is achieved when the volume of suitable crude oil and equivalent substances available from Canadian hydrocarbon productive capacity within the domestic and international jurisdiction of Canada is adequate to supply the feedstock requirements of Canadian refineries necessary to satisfy the domestic refined product requirements of Canada. Suitable crude oil and equivalent substances are those which are appropriate for processing in Canadian refineries and which are potentially deliverable to Canadian refineries.

19.03 In determining the requirements referred to in Article 19.02, the volumes of crude oils having the quality characteristics required for the production of specialty refined products and which are not available from Canadian sources shall be excluded.

Article 20 - Determination of Security of Supply

20.01 The Parties agree that for the five-year period which commences on January 1, 1986, the requirements of security of supply have not been met.

20.02 Thereafter, in the absence of agreement by the Ministers, the determination of whether security of supply as defined in Article 19 has been achieved shall be made by a three person arbitration panel appointed in the manner set out in Article 41.

Article 21 - Advice to Parties

21.01 The Board may advise the Parties generally and may recommend amendment of enactments pertaining to petroleum-related activity in the Offshore Area.

Article 22 - Information

22.01 The Parties shall have full and complete access to all Board information, and the Board shall require every applicant for a fundamental decision to serve promptly on each Minister a notice summarizing the main features of the application to the Board.

22.02 The Parties shall have access to the books and accounts of the Board for the purpose of an audit.

22.03 The Board shall promptly and concurrently notify each of the Parties of its decisions and orders, and of any event or information which in the Board's opinion is of significance.

Article 23 - Strategic Plan

23.01 The Board shall submit a plan every January to the Parties outlining the Board's intentions regarding land issuance, exploration and development.

PART III - GENERAL

Article 24 - Public Review

24.01 The Board has the power to conduct a public review of any matter within its mandate where it is in the public interest to do so.

24.02 In conducting a public review, the Board may

(a) establish terms of reference and a timetable that will permit a comprehensive review of the issue, including aspects falling within the retained jurisdiction of either Party;

(b) where a prospective project is being reviewed, require the proponent to submit a preliminary development plan, and, as needed, an environmental and socio-economic impact statement, including a preliminary benefits plan;

(c) name a panel for such hearings which shall report to the Board and the Parties; and

(d) hold a public hearing at appropriate locations in the Province and report to the Parties.

24.03 The Parties may at the request of the Board confer upon the Board, or a panel commissioned by the Board, powers, privileges and immunities pursuant to the Inquiries Act (Canada) or the Public Inquiries Act (Nova Scotia).

Article 25 - Government Consultations

25.01 The Government of Canada recognizes Nova Scotia as one of the producing provinces. The Province of Nova Scotia, therefore, will be a full participant in negotiations and consultations with the Government of Canada regarding national policies in all matters affecting Petroleum Resources in the Offshore Area. Such matters include the establishment of the price of oil and gas, and the monitoring of petroleum industry reinvestment.

Article 26 - Fiscal Instruments

26.01 Responsibility for, control of and revenues from fiscal instruments shall be allocated as if the Petroleum Resources and the activities related to the Petroleum Resources were located on the land portion of the Province of Nova Scotia.

26.02 The Province of Nova Scotia shall receive the proceeds of royalties and other provincial-type taxes of general application from petroleum-related activity in the Offshore Area. Without limiting the generality of the foregoing, these include:

(a) royalties;
(b) bonus payments;
(c) rental and licence fees;
(d) provincial corporate income tax; and
(e) sales tax.

26.03 The royalties, bonus payments, rentals and licence fees referred to in Article 26.02 shall be collected by the Board.

26.04 The corporate income tax and sales tax referred to in Article 26.02 shall be collected in the same manner as similar provincial taxes.

26.05 All revenues collected or assessed pursuant to this Article shall be deposited directly into a specified purpose account, to be known as the Nova Scotia Offshore Revenue Account and shall be paid by the Government of Canada to the Province of Nova Scotia consistent with payment schedules under the Canada-Nova Scotia Tax Collection Agreement.

26.06 In the event that the Federal Minister requires that a portion of an offshore production interest be offered for sale in order to reach 50 per cent Canadian ownership level

(a) the Province of Nova Scotia may bid on that portion of the interest; and

(b) in the event that no successful bid is made on that portion of the interest in question, the Province of Nova Scotia shall have first option to purchase the portion of the interest at the fair market value established objectively in a manner determined by regulations.

26.07 Unless the other Party has so agreed, neither Party shall create or retain for itself any portion of a petroleum interest in the Offshore Area, other than the royalties provided for by this Accord or any interest or portion of an interest purchased in the ordinary course by a Crown corporation.

Article 27 - Equalization Offset Payments

27.01 Both Parties, recognizing that there should not be a dollar-for-dollar loss of equalization payments as a result of offshore revenues flowing to the province, agree that the equalization offset provisions of the Canada-Nova Scotia Oil and Gas Agreement Act shall continue to apply.

Article 28 - Crown Corporations

28.01 Nova Scotia and federal Crown corporations involved in offshore oil and gas resource activities in the Offshore Area shall either be subject to all taxes, royalties and levies or shall make equivalent payments in lieu thereof.

Article 29 - Development Fund

29.01 The Government of Canada affirms its commitment to pay to the Province of Nova Scotia the sum of $200 000 000 as provided in the 1982 Agreement and waives repayments of this sum.

Article 30 - Management Offices

30.01 The Board shall ensure that all managing operators active in the Offshore Area establish offices in the Province of Nova Scotia with appropriate levels of decision making.

30.02 The Government of Canada shall establish and maintain in the Province of Nova Scotia, where possible, regional offices with appropriate levels of responsibility and authority for all departments and Crown corporations directly concerned with petroleum-related activities in the Offshore Area.

Article 31 - Benefits

31.01 The Parties share the objective that Nova Scotians and all Canadians continue to secure optimum benefits from Petroleum Resource activity in the Offshore Area and therefore

(a) in the review of benefits plans, the Parties shall ensure that first consideration shall be given to services provided from within Nova Scotia and to goods manufactured in Nova Scotia, as long as such goods and services are competitive in terms of fair market price, quality and delivery; and

(b) the benefits plans shall include employment and training plans and, consistent with the Canadian Charter of Rights and Freedoms, a priority of the Parties shall be to encourage the hiring and training of individuals from Nova Scotia who are qualified.

31.02 The Parties shall make every effort to provide, with industry, training programs so that Nova Scotians have a fair chance to obtain more technical and higher paying jobs. The Parties shall undertake a review of key shared federal-provincial training programs with a view to reorienting their direction, if appropriate, toward new opportunities. In addition, institutions located in Nova Scotia shall be given an opportunity to participate in private and governmental research and development relating to petroleum activity in the Offshore Area.

31.03 Plans submitted to the Board, for the use of goods and services and for employment, including plans for any specified purchases, shall be reviewed by the Board in consultation with the Parties, who shall advise the Board on the extent to which they provide for full, fair and competitive access. Both Parties will attempt to provide a common view to the Board, but where this is not possible, the decision on employment and procurement plans approval shall rest with the Board.

31.04 The Parties shall conclude a Memorandum of Understanding regarding the coordination of industrial and employment benefits by the Board and with respect to industrial and employment benefits review and evaluation procedures to be followed by both Parties and the Board.

31.05 The requirement for a benefits plan may be waived only with the agreement of both Parties.

31.06 The Parties may make regulations governing the benefits plan process.

Article 32 - National Security of Supply

32.01 Nothing in this Accord limits the powers of the Government of Canada with respect to energy emergencies, such as sudden domestic or imported oil supply shortfall. In addition, the Government of Canada may take any necessary measures to meet Canada's obligations under the International Energy Agency (IEA) oil sharing agreement providing such measures are fair and equitable in relation to other petroleum-producing regions of Canada.

Article 33 - Provincial Access to Offshore Production

33.01 For the purposes of this section, "shortfall of petroleum deliveries in the Province" means deliveries of petroleum that are inadequate to supply, on commercial terms,

(a) the end use consumption demand in Nova Scotia;

(b) the feedstock requirements of industrial facilities that are in place in the Province on January 31, 1986; and

(c) the feedstock requirements of any refining facility located in the Province which was not in place on January 31, 1986, provided that the feedstock requirements required to satisfy the demand of industrial capacity, as of January 31, 1986, in the Provinces of Newfoundland, New Brunswick, Prince Edward Island and Nova Scotia, have been met.

33.02 Where there is a shortfall of petroleum deliveries in the Province, the Provincial Minister may, after consulting with the Federal Minister, give notice to holders of production licences in the Offshore Area that the consumers and facilities in paragraphs (1)(a), (b) and (c) that are specified in the notice have, during the term of such notice, the first option

to acquire, on commercial terms, petroleum produced in the Offshore Area that is not subject to a sales contract with respect to that petroleum which was entered into prior to the giving of the notice.

33.03 The Parties agree that the Federal Minister or the holder of a production licence may refer to arbitration the determination by the Provincial Minister of the existence or continuation of a shortfall of petroleum deliveries in the Province.

Article 34 - Petroleum Resources Use in Nova Scotia

34.01 The Parties recognize that it is in both the national and the provincial interest to reduce Nova Scotia's disproportionate dependence on oil, particularly foreign oil. To this end the Parties agree to encourage the use within Nova Scotia of Petroleum Resources produced off the east coast of Canada.

Article 35 - Offshore Policy and Fiscal Regime

35.01 The Parties reaffirm the high priority they attach to promoting the first oil and gas production in the Offshore Area. To promote this objective, they shall:

(a) encourage interest holders to actively pursue the goal of early commercial oil and gas production and discuss with them from time to time adjustments that might be required; and

(b) assess pricing, fiscal and marketing developments and make such adjustments in their policies and programs as may be appropriate and equitable, taking into consideration adjustments made for other projects.

Article 36 - NSRL Drilling Fund

36.01 The Parties agree that Canada shall make available to Nova Scotia Resources Limited (NSRL) an amount of $25 million for the purpose of facilitating the drilling and development of wells that could contribute to early oil and gas development in the offshore area.

(a) Funds will be available to NSRL to defray 50 per cent of costs classified as Canadian Exploration Expenses (CEE) or Canadian Development Expenses (CDE) as set out by the federal Income Tax Act for wells spudded or for development activities undertaken prior to December 31, 1989.

(b) Funds will be advanced to NSRL on an as-needed basis as agreed by both Ministers.

Article 37 - Environmental Studies Research Fund (ESRF)

37.01 Nova Scotia may select one member of the Board or Board staff who shall be appointed to the ESRF Management Board.

37.02 The ESRF annual budget for the Offshore Area shall be reviewed by the Board and the application of related levies in the Offshore Area shall be subject to Board approval.

Article 38 - Protection of the Fisheries

38.01 The joint Nova Scotia-Canada Fisheries Advisory Committee respecting the Offshore Area shall be continued. The Committee includes representatives of both Parties and of fishermen and the fishing industry and provides advice on matters relating to the fishery.

Article 39 - Legislation

39.01 Each Party shall, within twelve months of the signing of this Accord, introduce the legislation necessary to implement the Accord and support it as a government measure.

39.02 The legislation implementing the Accord shall replace and supersede the Canada-Nova Scotia Oil and Gas Agreement Act, the Canada Oil and Gas Act or any Act substituted for it, the Oil and Gas Production and Conservation Act, the Offshore Oil and Gas Act (Nova Scotia), the Oil and Gas Production and Conservation (Nova Scotia) Act, and the Canada-Nova Scotia Oil and Gas Agreement Act (Nova Scotia) in the Offshore Area. All other federal and provincial legislation which is applicable to the management of Petroleum Resources in the Offshore Area will continue to apply as amended from time to time.

39.03 Notwithstanding Article 39.02, the legislation implementing this Accord will include:

(a) the following provisions of the Canada-Nova Scotia Oil and Gas Agreement Act:

(i) Section 3 - inconsistency,
(ii) Section 4 - amendment of agreement,
(iii) Section 22 - access to pipelines, and
(iv) Part IV - equalization offset payments.

(b) Part V of the Canada-Nova Scotia Oil and Gas Agreement Act, Sections 83-89 inclusive, as amended in Section 68 to waive repayment; and

(c) any provisions of the proposed Canada Petroleum Resources Act and regulations thereunder, the Oil and Gas Production and Conservation Act and regulations thereunder and the Oil and Gas Production and Conservation (Nova Scotia) Act and regulations made thereunder, to the extent they are consistent with this Accord.

39.04 The federal legislation implementing this Accord shall apply the fiscal instruments referred to in Article 26 to the Canada Lands in the Offshore Area, through the incorporation by reference of the relevant Nova Scotia legislation, including amendments thereto, or through other appropriate legislative mechanisms.

39.05 Notwithstanding Article 39.04, the Government of Canada is not required to give effect to an amendment to any fiscal instrument that is inconsistent with a bilateral or multinational international treaty, international convention or international agreement respecting taxation, tariffs or trade to which the Government of Canada is a signatory and which has come into effect between the signing parties.

39.06 The federal courts shall be vested with jurisdiction in the Offshore Area in respect of any matter to the same extent as if the matter had arisen within their ordinary jurisdiction. The provincial courts shall be vested with jurisdiction in the Offshore Area in respect of any matter arising under the laws made applicable by Parliament to the Offshore Area to the same extent as if the matter had arisen within their ordinary territorial jurisdiction. For the purposes of this Article, the Offshore Area shall be deemed to be within the territorial limits of the County of Halifax.

39.07(1) Provincial legislation and regulations made thereunder respecting labour standards and occupational safety and health apply on any marine installation or structure that is within the Offshore Area in connection with the exploration or drilling for or the production, conservation or processing of petroleum within the Offshore Area.

39.07(2) Notwithstanding subsection (1), any provision of any provincial legislation or regulation referred to in subsection (1) made in relation to the following matters:

(a) the safety and inspection of all operations conducted in connection with the exploration and drilling for and the production, conservation, processing and transportation of petroleum and the measures to be taken to ensure the safety of such operations;

(b) the conditions under which drilling operations may be carried out and any special measures to be taken for such operations;

(c) the measures to be adopted to confine any petroleum or water encountered during operations to the original stratum and to protect the contents of the stratum from infiltration, inundation and migration;

(d) the minimum acceptable standards for the methods, tools, equipment and materials to be used in drilling, completing, operating, suspending or abandoning any well or other work;

(e) the minimum acceptable standards for the construction, alteration or use of any works, fittings, machinery, plant and appliances used for the development, production, transmission, distribution, measurement, storage or handling of any petroleum; or

(f) any other provision of this Accord respecting occupational safety or health,

does not apply on marine installations or structures during such time as those installations or structures are within the Offshore Area in connection with a purpose referred to in subsection (1).

39.07 (3) Notwithstanding subsection 80(1) of the Canada Labour Code or any other Act of Parliament

(a) Parts III and IV of the Canada Labour Code do not apply on any marine installation or structure referred to in subsection (1), and

(b) Part V of the Canada Labour Code does not apply and the provincial legislation in respect of labour relations, as amended from time to time, applies on any marine installation or structure referred to in subsection (1) that is within the Offshore Area for the purpose of becoming, or that is permanently attached to, permanently anchored to or permanently resting on the seabed or subsoil of the submarine area of the Offshore Area

during such time as the installation or structure is within the Offshore Area in connection with a purpose referred to in that subsection.

39.08 Other than by mutual consent, except in respect of those matters enumerated in Articles 10, 11 and 43, neither the Governor General in Council nor Lieutenant Governor in Council shall make, repeal or amend orders or regulations made pursuant to the legislation implementing the Accord.

Article 40 - Coordination

40.01 The Board shall conclude Memoranda of Understanding with those departments and agencies of the Parties having continued responsibilities in the Offshore Area, with a view to ensuring effective coordination and minimum duplication.

Article 41 - Arbitration

41.01 Where a matter between the Parties is to be arbitrated pursuant to this Accord, each Party shall appoint one member of the panel of arbitrators who shall jointly appoint the third arbitrator. Failing such appointment of the third arbitrator within 30 days of the appointment of the first two arbitrators, the Chief Justice of Nova Scotia shall appoint the third arbitrator.

41.02 The decision of the arbitrators is final and binding on the Parties.

41.03 Any other matters relating to the arbitration process may be set out in the implementing legislation or, in lieu thereof, by agreement between the Parties.

Article 42 - Constitutional Entrenchment

42.01 Upon the achievement of such support as may be required, the Government of Canada shall introduce a resolution satisfactory to the Province of Nova Scotia to amend the Constitution of Canada to entrench the principles of this Accord. The form of the resolution shall be acceptable to the Parties.

Article 43 - Area Covered by Accord

43.01 The Offshore Area described in the Canada-Nova Scotia Oil and Gas Agreement Act except for the portion thereof under United States jurisdiction in accordance with the decision of October 12, 1984 of the International Court of Justice in the Gulf of Maine case, shall constitute the Offshore Area for the purposes of this Accord.

43.02 Where a dispute arises with a neighbouring province as to the boundaries of the Offshore Area and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person or body for settlement, as determined in accordance with Article 43.03.

43.03 For the purposes of this Article, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute shall be determined by the Federal Minister after consultation with the provinces concerned in the dispute.

43.04 Where the procedure for settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delineation, with such modifications as the circumstances require.

43.05 For purposes of this Accord the limits described in Schedules II and III of the Canada-Nova Scotia Oil and Gas Agreement Act shall constitute the limits of the Bay of Fundy and the limits of Sable Island respectively.

Article 44 - Transition

44.01 Notwithstanding that this Accord shall replace and supersede the Canada-Nova Scotia Agreement on Offshore Oil and Gas Resources Management and Revenue Sharing dated March 2, 1982, the Canada-Nova Scotia Oil and Gas Agreement Act and the Canada-Nova Scotia Oil and Gas Agreement (Nova Scotia) Act will remain in force until replaced by legislation implementing this Accord. Pending the enactment of legislation implementing this Accord the Parties agree to administer the Offshore Area to the extent possible within the spirit of this Accord.

Article 45 - The Crown Share Adjustment

45.01 For any project, where it is demonstrated by Nova Scotia that a portion of the Crown Share that could have been acquired under the Canada-Nova Scotia Offshore Oil and Gas Agreement Act would have obtained a threshold rate of return greater than the lesser of 20 per cent or the provincial borrowing rate prevailing when the calculation is made plus seven per cent, Nova Scotia shall be eligible to receive a Crown Share Adjustment payment in respect of that project.

45.02 The calculation of the threshold rate of return that Nova Scotia would have received on its portion of the Crown Share shall be based on the cost and price assumptions in the approved Development Plan for the project and the fiscal regime for the project, taking full account of the liabilities set out in Section 29(2) of the Canada Oil and Gas Act and any liabilities associated with the acquisition costs set out in Schedule IV of the 1982 Agreement as amended in 45.03.

45.03 In recognition of the lower rates of inflation generally prevailing and to reduce Nova Scotia's acquisition cost, the calculation of the Province's notional cost of acquisition (set out in Schedule IV to the 1982 Agreement) is amended to reduce the factor by which eligible costs are increased from 1.25 to 1.00 per cent per month .

45.04 The Crown Share adjustment payment shall be paid annually by Canada to Nova Scotia in respect of any project after the attainment of the Offshore Revenue Threshold.

45.05 In any year, the amount of the annual Crown Share adjustment payment in respect of any project shall be equal to 75 per cent of the notional profits associated with Nova Scotia's portion of the Crown Share reduced by the nominal value of special federal fiscal or other incentives for that project accumulated to that date beyond those generally prevailing in the Offshore Area, provided these are agreed to by Nova Scotia. This payment shall be made by Canada to Nova Scotia within six months of the end of the fiscal year.

45.06 The annual calculation of the notional profits associated with the provincial portion of the Crown Share shall be based upon actual project revenues and costs including inter alia development costs, operating costs, taxes and royalties paid and any liabilities associated with the acquisition as calculated under 45.02.

45.07 Adjustment payments shall terminate the year Nova Scotia reaches the national average level of fiscal capacity.

Dated at , this day of 1986.

For the Government of Canada

For the Province of Nova Scotia

Brian Mulroney, P.C., M.P.
Prime Minister of Canada

John M. Buchanan, P.C., Q.C.
Premier of Nova Scotia

Marcel Masse, P.C., M.P.
Minister of Energy, Mines and Resources

Joel R. Matheson, Q.C.
Minister of Mines and Energy